IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 343 of 2001
With
SPECIAL CIVIL APPLICATION No. 4403 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AHMEDABAD MUNICIPAL TRANSPORT SERVICE - Petitioner(s)

Versus

GOVINDBHAI AMBALAL PRAJAPATI - Respondent(s)

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Appearance :

SCA No.343 of 2001
MR HS MUNSHAW for Petitioner(s) : 1,
MR NN PRAJAPATI for Respondent(s) : 1,

SCA No.4403 of 2001

MR NN PRAJAPATI for petitioner
MR HS MUNSHAW for respondent.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 07/09/2005

ORAL JUDGMENT

Special Civil Application No.343 of 2001 has been

filed by the Ahmedabad Municipal Transport Service challenging the legality of the award dated 6.4.2000 passed by the Labour Court, Ahmedabad. Special Civil Application No.4403 of 2001 has been filed by the workman challenging the very same award passed by the Labour Court.

2. The respondent of Special Civil Application No.343 of 2001, namely, Shri Govindbhai Ambalal Prajapati was employed as conductor by the petitioner. For the alleged misconduct which took place on 2.7.86 a charge-sheet came to be issued against the workman on 18.7.86. It was alleged that the respondent had assaulted one passenger. Upon conclusion of the departmental inquiry, the disciplinary authority awarded punishment of dismissing the respondent from service on 1.9.88. The Appellate Committee, however, reduced the punishment and by an order dated 22.4.91 reinstated the respondent in service as a fresh engagement. The workman, however, approached the Labour Court challenging his dismissal from service. The Labour Court, allowed the reference in part and ordered backwages for the entire period from the date of dismissal till his reinstatement and provided for punishment of withholding of five increments. It was,

however, not specified whether the withholding of increments would be with future effect or without future effect.

3. In the impugned award, on the one hand the Labour Court records that the conclusion of the employer that charges are proved cannot be accepted and on the other hand, the Labour Court observed that the punishment of dismissal from service is excessive and for an act committed in the spur of the moment of excitement, extreme penalty should not be visited with. To strike a balance between the two, therefore, the Labour Court provided for full backwages to the workman from the date of dismissal till his reinstatement and provided for a penalty of withholding of five increments by way of punishment.

4. The award of the Labour Court cannot be sustained. There was material on record through which the employer had held the charges against the respondent as proved. Such factual findings could not have been interfered with by the Laobur Court for want of strong rebuttal evidence. As noted earlier, the conclusions of the Labour Court were also self-contradictory. If the employer had failed

to prove the charges against the respondent, there was no question of imposing any penalty whatsoever. If the charges were proved, they were serious enough and the punishment out not to have been interfered with. In the present case, the employer had produced a default card of the respondent before the Labour Court. It was pointed out that the respondent had committed as many as 68 defaults in the past, 21 of which pertained to his misbehaviour with passengers. The respondent was thus habituated in misbehaving with the customers. It was, therefore, not appropriate to interfere with the award of punishment. Awarding of backwages in such circumstances would be giving premium to an employee who is proved to have committed misconduct.

5. In the result, the award of the Labour Court is required to be and is hereby set aside. Special Civil Application No.343 of 2001 is accordingly allowed. Rule is made absolute accordingly with no order as to costs. Cross petition being Special Civil Application No.4403 of 2001 is rejected. Rule is discharged with no order as to costs.

(Akil Kureshi, J.)

(vjn)